

Volume 5

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

FINJAN, INC.,)
)
 Plaintiff,)
)
 VS.)
)
 JUNIPER NETWORKS, INC.,)
)
 Defendant.)

No. C 17-5659 WHA

San Francisco, California
Friday, December 14, 2018

TRANSCRIPT OF PROCEEDINGS

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7:22 a.m.

2 P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard out of the presence of the jury:)

5 **THE COURT:** Okay. Let's get started.

6 Okay. First we'll consider Rule 50 motions. We've
7 considered your written material so the oral part will be
8 brief. Let's hear first from the defendant.

9 **MR. HEINRICH:** Good morning, Your Honor. Alan
10 Heinrich.

11 **THE COURT:** One issue at a time. So what's your first
12 issue?

13 **MR. HEINRICH:** So we move for JMOL on damages. We
14 think it's clear from plaintiff's submission that they're
15 intent on violating the law. They're going to get up here in a
16 few minutes and they're going to present the jury with a
17 damages theory that the Federal Circuit rejected in *Finjan v.*
18 *Blue Coat*.

19 They're going to argue to the jury that the jury should
20 award a royalty based on a per-user or per-scan rate that's
21 based on nothing more than what Finjan's CEO testified Finjan
22 would like to get. It's contrary to law.

23 **THE COURT:** Okay. All right.

24 All right. Let's hear from the other side.

25 **MR. ANDRE:** Good morning, Your Honor. Paul Andre for

PROCEEDINGS

1 Finjan.

2 **THE COURT:** Good morning.

3 **MR. ANDRE:** Your Honor, we've put in the damages case,
4 a fact-based case, that we talked about at the pretrial
5 conference. We were going to give the jury a lot of facts to
6 look at, ones in which they can base a reasonable royalty on.

7 With respect to violating the law, we have adhered
8 strictly to the Federal Circuit's guidelines in the *Finjan v.*
9 *Blue Coat* case.

10 As I spoke to you yesterday about the apportionment issue,
11 we have gone to great pains to apportion the Sky ATP module
12 down to its infringing components. That's taking out over
13 60 percent of the value of Sky ATP.

14 So we have --

15 **THE COURT:** Wait. Wait. Wait. Sky ATP and the
16 module. Where did you take anything out for the other
17 functions of the hardware?

18 **MR. ANDRE:** For the SRX?

19 **THE COURT:** Yes.

20 **MR. ANDRE:** Well, Your Honor, the apportionment for
21 SRX can be -- the Sky ATP can be attributed to the SRX or they
22 can find damages on Sky ATP alone. We have a claim in this
23 case for Sky ATP by itself without SRX. So at the very least
24 the jury can find damages on Sky ATP infringement by itself,
25 and we have apportioned that.

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